

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**RETRACTABLE  
TECHNOLOGIES, INC., et al.**

**v.**

**BECTON, DICKINSON AND CO.**

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**Case No. 2:08-CV-16**

**ORDER**

Before the Court is Retractable Technologies, Inc.’s (“RTI”) Motion to Strike Attachments to the Declaration of William B. Michael Filed in Support of Becton, Dickinson and Company’s Motion for Judgment as a Matter of Law, or Alternatively, for New Trial or Remittitur against Becton, Dickinson and Company (“BD”) (Docket No. 600, the “Motion”).

BD filed the declaration of William B. Michael in support of its motion for judgment as a matter of law. Attached to this declaration are a number of demonstrative exhibits. RTI moves to strike the attachments from the declaration and from BD’s motion. Motion at 1.

In its deliberations, the jury was to base its verdict on the *evidence* submitted in the case. In considering a motion for judgment as a matter of law, the Court is obligated to do the same, and review the evidentiary record before it. Neither party disputes the fact that demonstrative aids are not evidence and are not a proper basis upon which to base a verdict or a JMOL ruling. *See United States v. Garcia*, 334 Fed. Appx. 609, 614 (5th Cir. 2009). BD instead contends that it “attached the pedagogical aids to its Rule 50 motion simply for the purpose of assisting the Court in placing into context the testimony that was offered from the witness stand” and that “[i]t is entirely proper to consider them in this context.” Docket No. 610 at 2. While the Court appreciates BD’s efforts to provide context, it would be improper for the Court to use the

demonstrative aids provided by BD as a basis for its ruling on BD's motion for judgment as a matter of law unless the information contained in those demonstrative aids was also located elsewhere in the evidentiary record. Thus, allowing the introduction of BD's "pedagogical aids" at this stage muddies the record and serves only to distract from the issues at hand. Accordingly, the Court **GRANTS** the Motion and **ORDERS** that the demonstrative exhibit attachments to the declaration of William B. Michael are hereby stricken.

**So ORDERED and SIGNED this 17th day of December, 2014.**

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**